

ESTTA Tracking number: **ESTTA741427**

Filing date: **04/21/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	AdvoCare International, LP		
Entity	Partnership	Citizenship	Delaware
Composed Of:	AdvoCare GP, LLC a Delaware limited liability company		
Address	2801 Summit Ave. Plano, TX 75074 UNITED STATES		

Attorney information	Joel R. Feldman, Esq. Greenberg Traurig, LLP 3333 Piedmont Rd., NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com Phone:678-553-4778
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Registration Subject to Cancellation

Registration No	4521485	Registration date	04/29/2014
Registrant	X Gym Ultimate Nutrition LLC 23216 SE 15TH CT Sammamish, WA 98075 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2011/10/01 First Use In Commerce: 2011/10/01 All goods and services in the class are cancelled, namely: Dietary and nutritional supplements; Liquid nutritional supplement; Nutritionaland dietary supplements formed and packaged as bars; Nutritional supplement energy bars

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3303370	Application Date	09/05/2003
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	ADVOCARE SPARK		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Nutritional dietary supplement in the form of a powdered drink mix

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SPARK		
Goods/Services	nutritional dietary supplements in the form of powdered drink mix		

Attachments	BioSparx Petition to Cancel.pdf(287097 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jrf/
Name	Joel R. Feldman, Esq.
Date	04/21/2016

In the matter of U.S. Trademark Registration No. 4,521,485
For the mark BIOSPARX
Registered: April 29, 2014

Cancellation No.

AdvoCare International, LP (“AdvoCare”) believes that it will be damaged by U.S. Trademark Registration No. 4,521,485 (the “Registration”) and therefore files this petition to cancel the Registration in its entirety.

BACKGROUND

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supplement energy bars (the “Class 5 Goods”) on April 29, 2014.

**ADVOCARE’S USE AND REGISTRATION
OF THE SPARK AND ADVOCARE SPARK BRANDS**

4. AdvoCare is the successor in interest to trademarks used and owned by AdvoCare International, LLC, a Delaware limited liability company.

5. Since February 1997, AdvoCare and its predecessor in interest have continuously used the mark SPARK in interstate commerce in the United States for nutritional dietary supplements in the form of powdered drink mix.

6. AdvoCare has common-law rights in the SPARK mark for nutritional dietary supplements in the form of powdered drink mix based on its nationwide use of the mark.

7. Since April 2004, AdvoCare has used the ADVOCARE SPARK mark in interstate commerce in the United States for nutritional dietary supplements in the form of powdered drink mix.

8. AdvoCare owns U.S. Reg. No. 3,303,370 for ADVOCARE SPARK in International Class 5 for nutritional dietary supplement in the form of a powdered drink mix (TSDR record attached at Exhibit 1).

9. U.S. Reg. No. 3,303,370 is a valid and subsisting incontestable U.S. trademark registration.

10. AdvoCare has filing priority in the ADVOCARE SPARK mark since September 5, 2003.

**COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION**

11. Registrant filed its application for BIOSPARX on September 17, 2013, over 15 years after AdvoCare began using the SPARK mark for nutritional dietary supplements.

12. Registrant alleges that it began using the BIOSPARX mark on October 1, 2011,

over 14 years after AdvoCare began using the SPARK mark for nutritional dietary supplements.

13. Registrant's registered BIOSPARX mark closely resembles AdvoCare's SPARK and ADVOCARE SPARK marks.

14. The Class 5 Goods identified in the Registration are closely related to AdvoCare's SPARK- and ADVOCARE SPARK-branded International Class 5 goods, nutritional dietary supplement in the form of a powdered drink mix.

15. Registrant's continued use and registration of the mark BIOSPARX is likely to cause confusion, mistake, and deception as to the source of Registrant's goods within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

16. Registrant's continued use and registration of the mark BIOSPARX will injure and damage AdvoCare and the goodwill and reputation symbolized by AdvoCare's SPARK and ADVOCARE SPARK marks within the meaning of 15 U.S.C. § 1064.

17. Based on the confusing similarity of the Registrant's and AdvoCare's marks and the high similarity of Registrant's Class 5 Goods with AdvoCare's SPARK- and ADVOCARE SPARK-branded goods, the public is likely to incorrectly believe that Registrant's BIOSPARX-branded nutritional supplements are connected to AdvoCare. This confusion will cause irreparable damage to AdvoCare.

18. The Registration should be canceled under 15 U.S.C. § 1052(d), because the registered mark resembles a mark previously used in the United States by AdvoCare and is likely to cause confusion, mistake, or to deceive.

COUNT II
ABANDONMENT

19. AdvoCare conducted an investigation, reasonable in scope, regarding Registrant's past and current use of the BIOSPARX mark.

20. According to the Washington State Secretary of State website, X Gym Ultimate Nutrition, LLC became an inactive entity on September 2, 2014, and has remained an inactive entity since that date.

21. The Twitter account, <https://twitter.com/biosparx>, has not been active since October 3, 2013.

22. The Facebook account, <https://www.facebook.com/biosparx>, is unavailable.

23. Upon information and belief, Registrant is not currently using the BIOSPARX mark in interstate commerce on or in connection with the Class 5 Goods.

24. Upon information and belief, Registrant has no *bona fide* intention to resume using the BIOSPARX mark in interstate commerce on or in connection with the Class 5 Goods.

25. Registrant has abandoned U.S. Trademark Reg. No. 4,521,485, and this registration should be cancelled by the Trademark Trial and Appeal Board.

CONCLUSION

26. AdvoCare respectfully requests that U.S. Trademark Registration No. 4,521,485 be canceled and that this Petition to Cancel be sustained.

Date: April 21, 2016

Respectfully submitted,
GREENBERG TRAURIG, LLP



Joel R. Feldman, Esq.
Jacquelynn J. Regan, Esq.


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***Attorneys for Petitioner AdvoCare
International, LP***

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: April 21, 2016

I certify that this Petition to Cancel is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.

By: 
Joel R. Feldman, Esq.

CERTIFICATE OF SERVICE

I certify that on April 21, 2016, I served this Petition to Cancel by first-class mail to:

23216 SE 15th Court
Sammamish, WA 98075


By: 
Joel R. Feldman, Esq.

Exhibit 1

On April 22, 2016 TSDR will update the XML schema from version ST-96 1_D3 to version ST-96 2.2.1. Consequently, 3rd party applications that utilize TSDR XML may not function as intended after that date. Therefore, the USPTO will make available the current XML schema at the following link: https://tsdrsec.uspto.gov/ts/cd/casestatus/SERIAL_OR_REG_NUMBER/v1/info.xml for a period of not less than 6 months. Any 3rd party applications that currently make calls to USPTO XML should be changed to point to that link.

It is highly recommended that 3rd party applications be upgraded to utilize the USPTO API's rather than the XML schema, which may change at any time rendering the 3rd party application inoperable. The link to the current API is https://tsdrapi.uspto.gov/ts/cd/casestatus/SERIAL_OR_REG_NUMBER/info.xml. Questions may be directed to [the TSDR Mailbox](#).

[STATUS](#) [DOCUMENTS](#) [MAINTENANCE](#)[Back to Search](#)[Print](#)

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Mark: ADVOCARE SPARK

No Image exists for this case.

US Serial Number: 78296802

Application Filing Date: Sep. 05, 2003

US Registration Number: 3303370

Registration Date: Oct. 02, 2007

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Feb. 11, 2013

Publication Date: Apr. 13, 2004

Notice of Allowance Date: Jul. 06, 2004

Mark Information

Mark Literal Elements: ADVOCARE SPARK

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Related Properties Information

Claimed Ownership of US [1959765](#), [2215866](#)
Registrations:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Nutritional dietary supplement in the form of a powdered drink mix

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 2004

Use in Commerce: Apr. 2004

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: AdvoCare International, L.P.

Composed of: AdvoCare GP, LLC, a Delaware limited liability company

Owner Address: 2801 Summit Avenue
Plano, TEXAS UNITED STATES 75074

Legal Entity Type: LIMITED PARTNERSHIP

**State or Country Where
Organized:** DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Joel R. Feldman, Esq., Kristen L. Fancher, Esq.

Attorney Primary Email atltrademark@gtlaw.com
Address:

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Joel R. Feldman, Esq., Kristen L. Fancher, Esq.
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Atlanta, GEORGIA UNITED STATES 30305

Phone: 678-553-2100

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Correspondent e-mail: atltrademark@gtlaw.com

**Correspondent e-mail
Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Aug. 08, 2014	NOTICE OF SUIT	
Jul. 11, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jul. 11, 2014	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jul. 07, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 07, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 21, 2013	NOTICE OF SUIT	
Feb. 11, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Feb. 11, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	77315
Feb. 11, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77315
Jan. 30, 2013	TEAS SECTION 8 & 15 RECEIVED	
May 07, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
May 07, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 15, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 15, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Oct. 02, 2007	REGISTERED-PRINCIPAL REGISTER	
Aug. 25, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	68552
Aug. 25, 2007	ASSIGNED TO LIE	68552
Jul. 16, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 07, 2007	STATEMENT OF USE PROCESSING COMPLETE	76873
Mar. 24, 2007	USE AMENDMENT FILED	76873
Mar. 24, 2007	TEAS STATEMENT OF USE RECEIVED	
Mar. 16, 2007	EXTENSION 5 GRANTED	65362
Jan. 06, 2007	EXTENSION 5 FILED	65362
Jan. 08, 2007	TEAS EXTENSION RECEIVED	
Jul. 01, 2006	EXTENSION 4 GRANTED	98765
Jul. 01, 2006	EXTENSION 4 FILED	98765
Jul. 01, 2006	TEAS EXTENSION RECEIVED	
Jan. 06, 2006	EXTENSION 3 GRANTED	98765
Jan. 06, 2006	EXTENSION 3 FILED	98765
Jan. 06, 2006	TEAS EXTENSION RECEIVED	
Jul. 06, 2005	EXTENSION 2 GRANTED	98765
Jul. 06, 2005	EXTENSION 2 FILED	98765
Jul. 06, 2005	TEAS EXTENSION RECEIVED	

Jan. 25, 2005	EXTENSION 1 GRANTED	73859
Jan. 06, 2005	EXTENSION 1 FILED	73859
Jan. 06, 2005	TEAS EXTENSION RECEIVED	
Jul. 06, 2004	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 13, 2004	PUBLISHED FOR OPPOSITION	
Mar. 24, 2004	NOTICE OF PUBLICATION	
Feb. 19, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 18, 2004	EXAMINERS AMENDMENT E-MAILED	
Feb. 17, 2004	ASSIGNED TO EXAMINER	77769

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 102

Date in Location: Feb. 11, 2013

Assignment Abstract Of Title Information - None recorded

Proceedings - Click to Load